

# SENATE BILL REPORT

## SB 6034

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As of January 29, 2018

**Title:** An act relating to authorizing limited retail telecommunications services for public utility districts that provide only sewer, water, and telecommunications on the effective date of this act.

**Brief Description:** Authorizing limited retail telecommunications services for public utility districts that provide only sewer, water, and telecommunications on the effective date of this act.

**Sponsors:** Senators Rolfes, Sheldon, Angel, Hunt, Chase, Kuderer and Hasegawa.

**Brief History:**

**Committee Activity:** Energy, Environment & Technology: 1/17/18.

**Brief Summary of Bill**

- Authorizes certain public utility districts (PUDs) to provide retail telecommunications services.
- Provides a process for petitioning the PUD board of commissioners (commissioners) for retail telecommunications services.
- Requires rates for retail telecommunications services to be fair and nondiscriminatory.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

**Staff:** Jan Odano (786-7486)

**Background:** The powers of PUDs and port districts are governed by statutes and a long history of court decisions. PUDs are expressly authorized, among other things, to provide electricity, water, and sewer service. They have additional incidental and implied authorities that are necessary for accomplishing their primary purposes.

PUDs and rural ports that were in existence on June 8, 2000, are authorized to acquire and operate telecommunications facilities for their own internal telecommunications needs and to

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provide wholesale telecommunications services within their district limits. PUDs are also allowed to provide wholesale services to other PUDs by contract.

Currently, the sections of statute authorizing districts to provide wholesale telecommunications services include the provision: "Nothing in this subsection shall be construed to authorize public utility districts [or rural port districts] to provide telecommunications services to end users." However, the term end user is not defined in the statute. In 2001, Attorney General Opinion No. 3 concluded that end user means retail customer, and that a PUD or rural port district may not use an interlocal agreement to sell or lease telecommunications facilities or services to other public agencies.

PUDs and rural port districts are required to ensure that their rates, terms, and conditions on wholesale services are not unduly or unreasonably discriminatory or preferential. Revenues from wholesale activities must be used to pay off the costs incurred in building and maintaining the telecommunications facilities.

Districts must charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions to the district. PUDs and rural port districts may not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Substitute):** A PUD that provides only water, sewer, and telecommunications services in a county with an area less than 500 square miles, may provide end user internet services on the PUD's broadband network.

After receiving a petition requesting retail internet services, the commissioners may hold three meetings to verify petitioners' signatures; determine and submit findings regarding the existence or adequacy of retail internet services; and by resolution, authorize the PUD to provide retail internet services or connectivity.

The petition must declare that there are no or inadequate retail internet service providers. The petition to request retail internet services may be submitted by:

- a majority of residents or businesses in any telecommunications local utility district;
- a majority of a group, including homeowner associations, or an individual who has developed a partnership payment structure to finance broadband deployment with a PUD.

Adequate retail internet service is determined by measuring retail internet service in the area and comparing it to service standards in the PUD service level agreement used for all PUD district network providers. The service measurement must be quantified by measuring the service with speed and capacity devices and software. A retail internet service provider may submit its own service assessment to the commissioners for consideration. The service assessment must be submitted within 30 days of the commissioners' first meeting on the petition requesting retail internet services.

The commissioners may authorize a PUD to provide or contract for internet services, as petitioned by the end users, when it has determined that service is inadequate or non-existent after:

- reviewing and evaluating the retail internet service providers information;
- resolving adequacy of service disputes through evidentiary hearings; or
- prevailing in arbitration regarding adequacy of service.

Dispute of the determination of broadband adequacy may be submitted to the commissioners for an evidentiary hearing. The commissioners must review the evidence provided by each party. If the commissioners find the evidence is in opposition and neither party agrees to a set of evidence, the retail internet service provider providing internet service may request arbitration.

A retail internet service provider requesting arbitration must serve notice to the commissioners within ten days of the adequacy of service determination and prior to the commissioners authorizing end user internet services. Each party must provide a list of arbitrators within 15 days of the initial notice. If the parties cannot agree on an arbitrator, then each must select an arbitrator. The two arbitrators must select a third arbitrator to complete an arbitration panel. The decision of the arbitrator or arbitration panel is final and the decision may not be appealed to any court. The parties are responsible for all costs and must equally bear the costs of arbitration.

The PUD must offer fair and nondiscriminatory rates for retail internet service. The PUD may set tiers of charges based on user service demands.

Nothing in this act confers any authority over locally regulated utilities by the Utilities Transportation Commission.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony on Proposed Substitute:** PRO: This bill would allow service to be provided in underserved and unserved areas. It would limit the authority to where there is no ISP or inadequate service. It will provide service for people who need it and are willing to pay for it.

OTHER: We would have concerns if the scope of this bill were to expand. There are problems with the bill in that certain terms are not defined and the dispute resolution should go to the UTC. We need to ensure competitive parity.

**Persons Testifying:** PRO: Jim Civilla, Kitsap PUD; Paul Avis, Kitsap PUD; Lisa Thatcher, Kitsap PUD.

OTHER: Dave Arbaugh, Chelan PUD; William Bridges, CenturyLink.

**Persons Signed In To Testify But Not Testifying:** No one.